

### REMARKS

#### Claims 39-46

The Examiner determined that claims 39-46 "would be allowable if rewritten in independent form." However, claim 39 is already an independent claim from which claims 40-46 depend.

Claims 39-46 are thus believed to be in condition for allowance.

#### Terminal Disclaimer

Claims 1, 2, 38, 47-60 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over certain claims of commonly owned U.S. Patent No. 6,623,553. Applicants' have filed contemporaneously herewith a terminal disclaimer in compliance with 37 C.F.R. § 1.321(c) to overcome this rejection.

Claims 38, 47-51 and 57-60 were subject only to this obviousness-type double patenting rejection; and thus the terminal disclaimer is believed to place these claims in condition for allowance.

#### Claims 1-2 and claims 52-56

Original claims 1 and 2 were rejected by the Examiner under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 5,834,047 to Ahn. The Examiner did not reject or otherwise specifically address claims 52-56, which depend from independent claim 1. The Examiner has taken the position that "there does not appear to be any reason why [the Ahn reference] would not contain an ink composition with the applicants claimed viscosity [of about 2000 to 16000 cp at 25°C] because similar ink compositions with the same ink components would obviously have the same properties (i.e. viscosity)."

As explained in the Applicants' August 19, 2003 Preliminary Amendment, the Ahn compositions lack the stabilizers and thickening agents taught in the instant application and do not meet the viscosity limitation of independent claim 1. Ahn teaches that the "viscosity" of the liquified sugar component should be 50-90 Brix to ensure that the ink flows smoothly through the perforated plates and adheres to the confectionary material (col. 2, lines 54-61). The Brix

scale, however, is actually a refractive index tool that is effectively calibrated to the number of grams of cane sugar contained in 100 ml of water. The Brix scale is not a measure of viscosity, although increased amounts of sugar solute make a 90 Brix sugar solution somewhat more viscous than a 50 Brix sugar solution. As explained in the August 19, 2003 Preliminary Amendment, the 90 Brix solution has a viscosity of *less than about 20 cp* using the test method described in the present application. Even when the 90 Brix sugar solution was combined with the maximum suggested concentration of TiO<sub>2</sub> (the only other component taught in Ahn expected to have a substantial thickening effect), the viscosity of the ink base *was only about 500 cp*. Both of these viscosities falls far outside the claimed range of about 2000 to about 16000 cp.

Because Ahn fails to teach, suggest or disclose an edible ink having the recited properties, Applicants submit that independent claim 1 and dependent claims 2 and 52-56 are patentable over the art of record and are presently in condition for allowance.

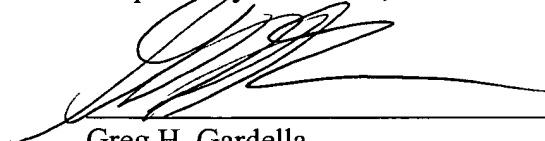
Applicants note that no claim amendments have been made to overcome prior art or to narrow the claim scope. The Examiner should infer no (i) adoption of a position with respect to patentability, (ii) change in the Applicant's position with respect to any claim or subject matter of the invention, or (iii) acquiescence in any way to any position taken by the Examiner.

Enclosed is a check for \$110 for the Petition for Extension of Time fee. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: \_\_\_\_\_

11/1/04



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